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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

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No.

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GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA, *Petitioners,*

v.

FLORIDA POWER CORPORATION, *Respondent.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Gainesville Utilities Department and the City of Gainesville, Florida, Petitioners herein, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on May 1, 1970.

## OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit (App. A, 1a-15a) is not yet reported. The main opinion and opinion on rehearing of the Federal Power Commission (App. B, 17a-44a, 44a-50a) are reported at 40 F.P.C. 1227 and 41 F.P.C. 4, respectively.

## JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on May 1, 1970 (App. A, 16a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 313(b) of the Federal Power Act, 16 U.S.C. 825l(b).

## STATUTE INVOLVED

The pertinent provisions of Section 202 of the Federal Power Act, 49 Stat. 487, as amended, 16 U.S.C. 824a are set out in Appendix C, 51a-52a.

## QUESTION PRESENTED

1. Whether, in directing large interconnected electrict utilities to interconnect with small systems under Section 202(b) of the Federal Power Act, the Federal Power Commission must include, in the "compensation * * * reasonably due" to such large systems, an allowance for the benefits received by the small systems as a result of the interconnection as well as reimbursement for costs incurred.

## STATEMENT OF THE CASE

This is the first fully litigated case presenting questions as to the terms and conditions to be prescribed with regard to interconnected operation of separately-owned electric systems having their own generating resources.

Pursuant to the complaint filed by Gainesville Utilities Department and the City of Gainesville, Florida,[1] the Federal Power Commission, by order issued under Section 202(b) of the Federal Power Act (App. C, 51a-52a) directed Florida Power Corporation, a "public utility" subject to Commission regulation under that Act, to establish physical connection with facilities of Gainesville, a municipally-owned electric system, and to sell to, and exchange energy with, Gainesville upon terms and conditions prescribed in that order. On appeal filed by Florida Power, the Court of Appeals affirmed the order of interconnection but set aside provisions as to compensation due to Florida Power on the ground that the Commission's failure to include therein an allowance for benefits received by Gainesville, as well as reimbursement for costs incurred, was based on incorrect and unsound policy. The pertinent facts, as shown in the record,[2] may be summarized as follows:[3]

Florida Power owns and operates a large bulk power system, valued at $500 million, which covers some 20,600 square miles in some 32 counties in west, northwest and central Florida, including Alachua County

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[1] Collectively referred to as Gainesville.

[2] The statistics in the record reflect operations for the year 1965 or, in some cases, 1966 (R. 354, fn. 1).

[3] Since the Petition does not take issue with the Court of Appeals' rulings (1) that Gainesville is a "person" entitled to seek relief under Section 202(b) and (2) that the Commission properly declined to require Gainesville to agree to a division of retail service areas as a condition to the interconnection, references to these matters, which occupied a substantial part of the attention of the Commission and the Court of Appeals, have been kept to a minimum.

in which Gainesville is located (R. 354).[4] In growing to this size, Florida Power absorbed 10 private and 16 municipal utilities (Tr. 173). It is now "actively seeking" to acquire additional municipal systems to which it sells wholesale power (Tr. 653).

Its generating plants have a total capability of 1595 megawatts[5] (mw) and it is installing a 525 mw unit for service in December 1969 (R. 354). Florida Power also is interconnected with 5 other major electric systems in Florida[5a] and with a Southern System company in Georgia[5b] (R. 354). By virtue of the above and its extensive company distribution facilities, Florida Power serves some 370,000 retail customers and supplies power at wholesale to 12 municipal distribution systems and 9 REA electric cooperatives (R. 354). Its peak load in 1966 was 1232 mw and was anticipated to reach 1826 mw by 1970, based on the 7 percent growth rate estimated by Florida Power (R. 354). As an interconnected utility, it can draw upon other companies for reserve capacity.

In contrast to Florida Power, Gainesville owns and operates an isolated electric generation, transmission, and distribution system valued at about $21 million, as of September 30, 1965 (R. 353-354). Gainesville's generating plant at that time had a total capability of 108.4 mw, of which only 58.4 mw could be considered

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[4] The distance between the northeast and southwest extremities of the area served by Florida Power is some 350 miles.

[5] A megawatt is the equivalent of 1,000 kilowatts (kw) or 1,000,000 watts.

[5a] Tampa Electric Company, Florida Power and Light Company, Orlando Utilities Commission, Gulf Power Company, and Jacksonville Electric Authority (R. 354).

[5b] Georgia Power Company.

firm since, as an isolated system, Gainesville's firm capacity is measured by its total capacity (108.4 mw) less its largest generating unit (50 mw) (R. 354). Gainesville's peak load in 1965 was 51.1 mw and its reserve capacity was 57.3 mw or 112.1% of peak demand (R. 354). Its peak is anticipated to reach 102 mw by 1970, based on its 15% growth rate (Ex. 57). Its load is doubling every five years, twice the national average.

All of Gainesville's operations are within Alachua County, Florida, where it competes with Florida Power.[6] In 1965, Gainesville sold some 202,000,000 kilowatt hours (kwh) of electricity at retail to some 17,000 customers in the County, both within and without the city limits (R. 354). The County's population is 90,000, of which 60,000 are within the city limits (R. 47). Florida Power's sales in the County were to five wholesale municipal and cooperative customers and some 3,700 retail customers (R. 49). Served out of Florida Power's Archer Road substation in Gainesville in 1965 were some 1,400 customers, to which Florida Power sold about 87,000,000 kwh for revenues of about $1,250,000 (Exh. 10). The largest part of these sales were to the University of Florida and Clay Electric Cooperative, an REA cooperative.

Since the demands on its system were growing at the rate of 15% annually, Gainesville found in 1964 that it would need additional capacity beginning in 1967 despite its large reserves. In order to deal with this problem, Gainesville in 1964 and 1965 sought to arrange an interconnection with Florida Power which

[6] For example, the University of Florida, located mostly within Gainesville's city limits, has four times shifted its purchases between Gainesville and Florida Power (R. 368).

would enable it, by sharing reserves or otherwise, to increase the firm capacity of its 1965 system without investing immediately in additional generating facilities. However, these efforts failed, and in November, 1965, Gainesville filed with the Commission an application for interconnection under Section 202(b) of the Federal Power Act, App. C, 51a-52a (R. 300-312b).[7]

Following extensive hearings, the Presiding Examiner issued his Initial Decision (R. 313-341), in which he required both utilities to interconnect and provide emergency services to each other up to the full 60 mw capacity of the interconnecting facilities. He found, *inter alia,* that (R. 321):

> "Witnesses for Gainesville, Florida Power and Staff are in agreement that the proposed interconnection is desirable and in the public interest * * *. If Gainesville were to maintain its isolated status it would be required to install duplicating additional generation of its own in order to assure its customers of firm service, although not without some curtailment because of reduction in frequency in the event of loss of its largest unit. Independent maintenance of sufficient installed capacity (fn. omitted) to carry peak-hour load in the event of an outage, to the extent of the loss of Gainesville's largest unit, would surfeit the area with capacity far in excess of the amount necessary at any one time, an obviously wasteful and uneconomic process."[8]

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[7] Gainesville subsequently installed three 15 mw gas turbine generators and is constructing an 81 mw fossil-fuel steam generator scheduled for 1972 operation.

[8] Despite this finding, however, the Examiner recommended that interconnection be ordered only upon the condition that the parties first agree to an elimination of duplicate facilities (R. 341).

In addition, while the Examiner declined, in fixing the schedule of charges to be made for services provided under the interconnection, to allow the $3.08 per kw per year demand charge pressed by Florida Power for emergency back-up service, he provided instead for a splitting of the operating benefits resulting from the interconnection (R. 333, 340).

In its Opinion and accompanying order here under review (App. B, 17a-44a, 44a-50a), the Commission found with regard to the interconnection itself (App. B, 22a):

> "* * * this record affirmatively shows that the proposed interconnection b e t w e e n [Florida Power] and Gainesville is desirable and in the public interest. Each system will gain financial and engineering benefits from the interconnection. The record also shows that the ordered interconnection will not place an undue burden upon Florida Power, will not require [Florida Power] to enlarge its generating facilities, and will not impair Florida Power's ability to render adequate service to its customers."

As to the claimed standby charge, i.e. for allegedly keeping facilities available to provide "instantaneous" emergency service, the Commission held (App. B, 29a):[9]

> "* * * the record in this proceeding does not establish any satisfactory justification for the im-

[9] With the exception of this claimed charge, the Commission adopted the Examiner's recommendations as to the compensation to be paid for services to be provided under the interconnection with minor changes not here relevant (App. B, 26a-27a). With reference to emergency service, the Commission provided (App. B, 41a):

> "(e) Emergency Electric Service: Emergency electric service provided for a period of less than 60 minutes shall be

> position of [the $3.08 per kw per year] * * * demand charge as requested by Florida Power. We are also of the opinion that the 50-50 split proposal of the Examiner is not appropriate."

In this regard, the Commission pointed out that "Gainesville has agreed to absorb the entire cost of the facilities needed for the proposed interconnection" without any "direct cost to Florida Power" (App. B, 26a, 32a), and that compensation for services provided is to be determined by "the proportionate burdens each system places upon the interconnected system networks, not the benefits each expects to receive" (App. B, 29a-30a). However, the Commission noted (App. B, 30a):

> "If we were to appraise Florida Power's request for an annual standby charge in terms of a 'splitting of the benefits' test, this record shows that the proposed intertie will afford both parties opportunities to take advantage of substantial and important benefits: electrical operating benefits, and corporate financial savings." [10]

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treated as Inadvertent Energy Transfer * * *. Such service, if provided beyond the end of a 60 minute period shall be treated as Scheduled Electric Service * * *.

"(g) Payments: Except for payments related to Economy Energy transaction, * * *, payments shall be as follows:

"(1) Inadvertent energy, if not returned in kind, shall be paid for upon 30 days' notice given by the delivering party at the rate of 4 mills per kwh, or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the point of interconnection.

"(2) Scheduled Electric Service shall be paid for at the rate of $.05 per kw per day for each kw of actual or scheduled demand, whichever is greater, if paid for by Gainesville or whichever is smaller if paid for by Florida Power, plus 4 mills per kwh or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the Archer Substation."

[10] The Commission's opinions elaborated upon these benefits (App. B, 30a-32a, 45a-47a) as discussed *infra* pp. 18-19.

Consequently, since the emergency service did not impose any firm obligation upon Florida Power (App. B, 28a, fn 4) and hence did not in fact subject Florida Power to any burden, the Commission found that there was no basis for the charge. Further, the Commission commented that not only would the Company's proposed charge "discourage future coordinated planning and operation" (App. B, 30a), but the Company had failed "to include a comparable charge in any of the contracts voluntarily negotiated with the other systems with which it is interconnected" (App. B, 31a).

On appeal, the Court of Appeals agreed that the interconnection "is 'necessary or appropriate in the public interest' and the interconnection will not put an 'undue burden * * * upon' the facilities of Florida Power or 'impair its ability to render adequate service to its customers' " (App. A, 13a). However, the Court held that the terms of the interconnection prescribed by the Commission "do not adequately satisfy the statutory requirements [fn. omitted] because they do not provide Florida Power with the 'reimbursement reasonably due' it" (App. A, 13a). In this regard, the Court accepted Florida Power's contention "that the Commission's policy of looking to the proportionate burdens that each system places upon the interconnected system networks instead of the benefits received as a result of the particular interconnection is inconsistent with the statutory authority to compel the interconnection" (App. A, 1a-2a) and further held (App. A, 15a):

> "The Commission's policy of proportionate utility responsibility really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large

> system, however, receives no benefits but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation."

Accordingly, the Court declined to "enforce" this portion of the Commission order and remanded the case to the Commission to provide "reasonable compensation" (App. A, 15a).

## REASONS FOR GRANTING THE WRIT

1. This case presents a question, the proper resolution of which will have an important and far-reaching impact upon the Commission's ability to discharge its responsibility, under Section 202(a) of the Federal Power Act (App. C, 51a), "* * * of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources * * *."

According to the Commission's Natural Power Survey (1964), at pp. 267-268, there are over 3100 relatively small systems operating within the continental United States (excluding Alaska). While many of these systems are already interconnected with other and larger systems, there are nevertheless literally hundreds of such systems which are not so interconnected and operate in isolation, without any interconnection with any other system. For example, of the 137 municipal systems operating in Kansas in 1962, 60 generated their entire requirements and 55 of that 60 were completely isolated from any other electric system (Survey, p. 221).

Moreover, even where the small systems are interconnected with other and larger systems, the relation-

ships between the two systems are frequently very limited, and there is an absence of the cooperation necessary to achieve the benefits of full coordination. As repeatedly noted throughout the Survey (particularly p. 170, *et seq.*,), interconnection *and* full coordination are highly desirable and to be fostered at all levels and at every opportunity since they open the way for many and valuable benefits, not the least of which arise from reduced overall generating requirements and lower unit costs achievable in the planning and construction of new facilities. Indeed, "[p]articipation of the small systems in the benefits of coordination and a continuous search for means of broadening this participation are fundamental if these systems are to continue to provide low-cost power to their consumers and make the most efficient use of our fuel and capital resources." (Survey, p. 267)

In these circumstances, the court's rulings in this case obviously create obstacles to, and thereby discourage, meaningful interconnections and coordination—be they voluntary or Commission-directed under Section 202(b)—between small systems and large systems, as the Commission specifically pointed out with regard to the standby charge here sought by Florida Power (App. B, 30a). The decision would thus have a deterrent effect upon the Commission's efforts to foster expanded interconnection and coordination as a means of reducing the cost, and enhancing the reliability, of electric service.

The sanctioning of such a deterrent is especially to be avoided at this time, because of the developing shortages in electric capacity and the concomitant increasing threat of "brownouts" and possibly even "blackouts". It is also to be avoided because it is becoming increas-

ingly difficult and uneconomic for the smaller systems to continue to operate in isolation, and interconnection and coordination with other systems are virtually mandatory to assure their continued existence as viable entities. As the Commission stated in *Crisp County Power Commission* v. *Georgia Power Company,* F.P.C. , 67 P.U.R. 3d 75, 81 (1966):

> "The electric power industry is continuing its historic trend toward larger units in order to attain the economies inherent in large-scale production of energy. The industry also has accelerated the pace of its attempts to coordinate and to reduce reserve capacity in order to utilize more efficiently its capital investment and improve bulk power supply reliability. In this context, the disadvantages of small isolated systems which generate all of their own energy and rely upon their own limited resources, have become more evident and more critical with regard to the cost and reliability of service. The ever-widening gap that technology has created between large interconnected systems and isolated systems, in the economical use of capital and the efficient production of energy, threatens the survival of many small systems. Unless isolated systems can enter into coordination agreements with their larger interconnected neighbors, their outlook appears bleak, indeed."

2. In its dual rulings (1) that the "compensation * * * reasonably due" to a large system under Section 202(b) (App. C, 51a-52a) of the Federal Power Act must include an allowance for the benefits received by the small one, as well as reimbursement for costs incurred in connection therewith and (2) that interconnections under that Section benefit only the smaller systems with no benefits to large systems, the court below improperly injected its own views on a policy

issue whose resolution requires familiarity with the economics and technology of the electric power industry. In thus failing to defer to the policy espoused by the Commission and to evaluate the validity of that policy against a standard of reasonableness, the Court of Appeals flaunted the express language of Section 202(b), which clearly was intended to vest in the Commission the responsibility for determining the policy to be applied in formulating the terms of the interconnection as well as the terms themselves:

> "The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such orders, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them."

Respect for this Congressional mandate is particularly required because with any meaningful decision as to the appropriate policy having its roots in the complex economics and technology of the electric power industry, it is the Commission, not the Court, which is the expert in these matters by virtue of day-to-day exposure and experience as well as Congressional edict. See e.g., *Permian Basin Area Rate Cases,* 390 U.S. 747, 767 (1968); *Board of Trade of Kansas City* v. *United States,* 314 U.S. 534, 546-548 (1942); *National Broadcasting Co.* v. *United States,* 319 U.S. 190, 224 (1943); *Mulry* v. *Driver,* 366 F. 2d 544, 549-550 (9th Cir., 1966); cf. *United States* v. *Western Pacific R.R. Co.,* 352 U.S. 59 (1956); *Southwestern Sugar and Molasses Co., Inc.* v. *Rivers Terminals Corp.,* 360 U.S. 411 (1959).

3. The court's error in thus substituting its own views as to the appropriate policy to be applied for

those of the Commission is compounded by the fact that the views thus injected by the Court are themselves erroneous. By setting aside the Commission's order for failure to include in the compensation due Florida Power, an allowance for benefits received by Gainesville in addition to reimbursement for costs incurred by Florida Power, the court has in effect ruled that Section 202(b) contains a *mandate* requiring that the compensation provided include an allowance for these benefits.

Yet, it has long been established (1) that the Federal Power Act and its companion Natural Gas Act do not prescribe any specific method for determining just and reasonable rates and (2) that the Commission may properly use cost of service as a basis of determining such rates. See, e.g., *Permian Basin Area Rate Cases, supra,* at 767; *Federal Power Commission* v. *Hope Natural Gas Co.,* 320 U.S. 591, 602 (1944). Indeed, where the Commission undertook to abandon cost completely in favor of value in fixing rates for pipeline produced gas, its order has been set side. *City of Detroit, Michigan* v. *Federal Power Commission,* 230 F. 2d, 810 (D.C. Cir. 1955), *cert. denied,* 352 U.S. 829 (1956).

To be sure, benefits are relevant in determining whether to require interconnection (cf. *Crisp County Power Commission* v. *Georgia Power Company,* F.P.C. , 67 P.U.R. 3d 75 (1966)), but that is different from the problem here at hand. The statutory standard for ordering interconnection under Section 202(b) is whether "such action is necessary or appropriate in the public interest" (see App. C, 51a); obviously the existence and magnitude of the net benefits resulting from the interconnection are highly relevant

under that standard. On the other hand, the provisions as to the payments to be made once the interconnection is ordered are governed by the entirely different language of Section 202(b) relating to the compensation set out *supra* p. 12.[11]

Nor is the court's error mitigated by its assertion (App. A, 14a):

> "* * * although there is no direct cost, Florida Power, really its customers will bear a substantial burden. They must bear the allocated fixed cost represented by the added obligation imposed under the terms of the ordered interconnection."

To the contrary, the assertion does not accord with the facts and conditions of the interconnection as directed by the Commission. Thus, all of the costs of accomplishing the interconnection are to be borne by Gainesville, and none of these costs are to be paid by Florida Power (App. B, 32a). Further, Florida Power is to be paid for all the emergency electricity provided by it to Gainesville in accordance with the schedule of payments prescribed by the Commission covering both investment and operating costs.[12]

Accordingly, any additional charge imposed would have to be for the cost of facilities kept available to

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[11] Evaluation of net benefits could also have been relevant in determining how the costs of the interconnection should be divided between the parties. However, there was no such problem in the instant case, since Gainesville proposed from the beginning to absorb all these costs.

[12] The schedule of charges prescribed by the Commission imposes a demand charge of $.05 per kw per day, in addition to the energy charge, if emergency service is provided for more than 60 minutes. See *supra*, p. 7, fn. 9. No issue has been raised with respect to these charges.

provide the service and, on this score, the Commission specifically took pains to emphasize (App. B, 28a, fn. 4) that its order imposes no obligation upon Florida Power to provide any specific firm service to Gainesville. Since this extends to emergency service, Florida Power's only obligation with regard to emergency service is to provide such service to Gainesville only when, as, and if available. Plainly, such an obligation does not require Florida Power to have facilities available at all times capable of supplying energy instantaneously with the onset of the emergency and hence does not impose the burden upon Florida Power envisioned by the court below.[13]

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[13] The reasons why emergency service as so limited is adequate for Gainesville's purposes are readily apparent to one familiar with the nature of the electric power industry in general and of the Gainesville-Florida Power situation in particular. On the one hand, if Gainesville ever needs emergency service, it would be only infrequently and then only during the summer when its peaks occur. If an outage of its largest unit were to occur at any other time, Gainesville would probably still have sufficient capacity of its own (including reserves) to carry its full load alone. It is only in the event of an outage of Gainesville's largest unit at the time of its summer peaks that Gainesville is likely to need emergency help from Florida Power; and, even then, its need would be below the capacity of that unit, since Gainesville has its own reserves which it could put into service.

On the other hand, Florida Power's peaks occur during the winter. Accordingly, since it sizes its capacity to meet these requirements in the *winter*, there can be little question but that absent an emergency on Florida Power's system, it will have excess capacity available in the *summer* sufficient to provide to Gainesville any emergency service it might need within a relatively short time.

This works the other way, also. Gainesville's reserves and seasonal diversity capacity will be available to Florida Power should it need help during its winter peaks. (See pp. 18-19, *infra*.) In addition, each system may draw on the other's reserve capacity any time of the year.

4. The error in the court's holding as to the need for an allowance for benefits bestowed is further aggravated by its related holding that the Commission's policy of proportionate utility responsibility

> "really works only one way. The small system receives high benefits and because of its size, no real obligations. The large system, however, receives no benefits but does incur real substantial responsibilities. Such imaginary equity is not reasonable compensation." (App. A, 15a.)

Not only does this reasoning consist solely of an *a priori* pronunciamento without any basis in the record or the actualities of the generation and distribution of electric power and energy generally, but it would sanction the imposition of a discriminatory charge upon Gainesville. None of Florida Power's voluntarily negotiated contracts with the other systems with which it is interconnected contain a comparable charge (App. B, 31a).[14]

Moreover, the court's reasoning does not accurately reflect the facts pertaining to the electric power industry. As the Commission noted in the comparable situation of a small system seeking interconnection with a large system involved in the *Crisp County Power* case, *supra,* at p. 82:

> "* * * there will often be situations where the smaller system can bring to the coordinated interconnection additional capacity and energy re-

[14] The two occasions in which Florida Power has contended that it has voluntarily negotiated financial payments with other systems to offset the lack of reciprocity, or mutuality of an interconnection, are beside the point. As shown in the Commission opinion on rehearing (App. B, 48a-49a), the situations there involved were very different from that of the instant case.

> sources at costs significantly lower than would otherwise be available, as well as adding to the reliability of the larger system."

Indeed, the court's reasoning is not even valid as it pertains to the Florida Power-Gainesville situation, as demonstrated by the specific findings of the Commission (App. B, 30a-32a, 45a-47a).

The fallacy in the court's generalization is its failure to appreciate that most large systems, such as Florida Power, do not consist entirely of units with capacities of 875 mw or even 500 mw, all in close proximity to the company's markets. To the contrary, large systems typically have many small units and their markets are spread over a wide geographical area. Obviously, a large system in such circumstances may well benefit substantially from interconnection with a smaller system, which is required to respond to local emergencies on the larger system.

In the instant situation, as the Commission found (App. B, 30a-32a, 45a-47a), interconnection with Gainesville can benefit Florida Power in a number of ways. For example,[15] Florida Power's generating units include "a small hydro plant of 8 mw; 7 old inefficient low pressure units with a combined maximum dependable output of 88 mw on cold standby used only to meet short-term winter peaks, with five units having a combined capacity of 65 mw to be added to cold standby by 1970 or 1971" (R. 315).[16] Consequently, Gainesville's ability, with its quick starting,

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[15] The illustrations in the text are confined to the more simple and obvious benefits in order to avoid getting enmeshed in the complexities of the generation and distribution of electric power and energy.

[16] Certain units in "cold standby" require some 8 to 12 hours before they are capable of generating power (R. 2075-2076).

highly reliable generating units (R. 35-38) to deliver anywhere from 60 mw to 100 mw to Florida Power during certain periods of the year obviously could be highly beneficial to Florida Power (App. B, 30a-31a, 46a).[17]

Again, the interconnection will make available an additional energy source and thereby improve the reliability of service furnished by Florida Power, in the Gainesville area where Florida Power has over a thousand customers but no generating plant of its own. Indeed, within the Alachua County area, Gainesville is the large system and Florida Power the small one. Thus, Gainesville's power plant is only 15 miles from Florida Power's Archer Substation and hence would be less exposed to lightning, storm or outage for other reasons than the energy sources used by Florida Power to serve that area. This is particularly so, since Florida Power's closest generating source is 75 transmission miles way; its next closest is 80 transmission miles away; and of the three energy sources connected to its load in the Gainesville area, two serve other loads and could be vulnerable to outage (App. B, 30a, 48a).[18]

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[17] Irrespective of the relative size of the two systems, the 60 mw capacity of the interconnection provides a ceiling upon the assistance each party can be to the other. Since, as indicated in the text, Gainesville is capable during certain periods of the year of making 60 mw available to Florida Power, its ability to help Florida Power is about equal to that of Florida Power to help it.

[18] The Commission's order does not impose any reserve requirements upon Florida Power corresponding to the reserve requirements imposed on Gainesville (App. B, 40a-43a). Not only has Florida Power provided fewer reserves than those required of Gainesville because of its interconnections with other members of the Florida Power pool, but under the practice of the industry, the loads and generating resources of Gainesville become integral components of Florida Power's loads and resources insofar as Florida Power's relation with its interconnecting utilities are concerned.

The attempt of the court below to brush aside these Commission findings as tentative only and hence as not "protected by the umbrella of the substantial evidence test" (App. A, 14a, fn. 20) misreads the Commission's opinions. The only thing tentative about these findings was not the findings *per se,* but their relevance in light of the Commission's policy relative to the determination of compensation (see App. B, 30a). As to the Commission's findings themselves, they are both firm and specific, as is readily apparent from the Commission's opinion on rehearing (App. B, 45a-48a), as well as its main opinion (App. B, 30a-32a).[19]

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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July, 1970

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[19] Since this ground was not raised in Florida Power's application for rehearing, the court's ruling violates the principle prohibiting a court reviewing a Commission decision from considering grounds not raised on rehearing. Section 313(b) of the Federal Power Act, 16 U.S.C. 825l(b); *Panhandle Eastern Pipe Line Company* v. *Federal Power Commission,* 324 U.S. 635, 649 (1945); *Federal Power Commission* v. *Colorado Interstate Gas Company,* 348 U.S. 492, 498 (1955).

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FLORIDA POWER CORPORATION, *Respondent*.

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## APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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# APPENDIX A

## 1. Opinion of Court of Appeals

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 27404

FLORIDA POWER CORPORATION, *Petitioner*,
v.
FEDERAL POWER COMMISSION, *Respondent*.

*Petition for Review of an Order of the Federal Power Commission (Florida Case)*

(May 1, 1970)

Before BROWN, Chief Judge, TUTTLE and MORGAN, Circuit Judges.

BROWN, Chief Judge: In this petition to review a Federal Power Commission order requiring the interconnection of the electrical transportation lines of the Florida Power Company with the distribution system of the City of Gainesville, Florida, primarily to secure emergency back-up power to overcome outages, two basic issues are presented. First, Florida Power contends that the Federal Power Act, 16 U.S.C.A. § 791 et seq., does not give the Commission jurisdiction to order a privately owned power company to interconnect its lines with those of a municipally owned system that both generates and distributes its own power. Second, the Commission's basic policy concerning the terms upon which an interconnection will be ordered is questioned.[1] Florida Power argues that

[1] Florida Power asserts that it should be compensated financially for providing the interconnection. By a subsidiary point it also argues that the City should be restricted in the areas in which it directly competes with Florida Power by duplication of facilities. We believe that the question of duplication of facilities is not directly related to this case and hold that the Commission was proper in refusing to condition the ordered interconnection of facilities on the elimination of this duplication.

the Commission's policy of looking to the proportionate burdens that each system places upon the interconnected system networks instead of the benefits received as a result of the particular interconnection is inconsistent with the statutory authority to compel the interconnection.[2]

We conclude that the Commission has jurisdiction to order this interconnection. We do not believe, however, that the Commission's order concerning the terms of this interconnection is consistent with the statute and thus we refuse enforcement of the order insofar as it fails to compensate Florida Power for making available large quantities of back-up power at the interconnection.

## I.

### A. The City of Gainesville System

The City of Gainesville owns an isolated electric generation, transmission, and distribution system that serves

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[2] Section 202(b) of the Federal Power Act, which grants the Commission authority to order interconnection, provides:

> "Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with any such persons: Provided, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them."

16 U.S.C.A. § 824a(b).

17,212 customers in the City and the adjacent areas. This system is projected to have a capacity of 138.4 mw[3] of generation in 1970 with its largest unit rated at 50 mw. The only transmission facilities operated by this system are a 115 kv[4] loop around the City and a 115 kv line to establish connection with Florida Power. The projected maximum peak hour demand (peak load) of the City's system in 1970 will be 102 mw.

### B. Florida Power's System

In contrast to the small City of Gainesville system[5] Florida Power operates a major generation, transmission, and distribution system that serves 370,000 retail customers and supplies wholesale power to 12 municipal distribution systems and 9 REA cooperatives. It covers 20,600 square miles in West, Northwest, and Central Florida. During 1970 Florida Power will have 2114 mw of generation and projects a peak load of 1826 mw.

Florida Power's *massive* system operates through a backbone transmission network, and is connected with four major electrical systems in peninsular Florida (Tampa Electric Company, Florida Power & Light Com-

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[3] A megawatt (mw) is a large unit of electric generating capacity. It is 1,000 kilowatts or 1,000,000 watts.

[4] A kilovolt (kv) is a large unit of electrical voltage used to rate transmission lines. Depending upon the size of the conductor a 115 kv line has a capacity of approximately 125 mw.

[5] The disparity in the sizes of the Gainesville and Florida Power systems and in the sizes of their electrical resources is striking and highly significant. These disparities in size are increasing each year as a result of the annual load growth on the Florida Power system being currently almost twice Gainesville's 1966 peak load and in excess of Gainesville's projected 1970 peak load of 102 mw. Gainesville's largest 50 mw generator is dwarfed by 8 generators on the Florida Power system and is about the equivalent of units that Florida Power uses only to meet peak load conditions and frequently are placed on cold shut-down.

pany, Orlando Utilities Commission and Jacksonville Electric Authority). It is also connected with Georgia Power Company and Gulf Power Company.

### C. The Results of the Interconnection

Obtaining emergency reserves[6]—both instantly available and peak load installed capacity—in small isolated systems such as that operated by the City is a difficulty accentuated more by isolation than size. The only two solutions are the acquisition of additional generating capacity that will rarely be used and which is economically inefficient since a large portion of it must be kept in operation or "spinning" in order to provide the essential instantaneous reserve (see note 6, *supra*) or to end the system's isolation by connection with other systems that can provide the emergency reserve.

To acquire emergency reserve of 50 mw, the size of its largest generator, the City chose the latter solution and sought to achieve the desired interconnection through

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[6] Emergency backup service is providing the reserve of generation which a system must have to protect against inability to supply load in the event of a failure or outage of generation. Generally speaking, it is industry practice to have available a reserve of generating capacity at least equal to the capacity of a system's largest generator. To the extent emergency backup service is available from some other source, a system can reduce its installed reserve of generation. Generally speaking, it also is industry practice to protect against a failure or outage of a system's largest generator by operating at all times a reserve of generation (customarily referred to as spinning reserve) equal to the load being carried by the largest generator in operation. The operating reserve of generation, as distinguished from the installed reserve of generation, is called spinning reserve because it must be in operation and be instantaneously available. If the operating reserve of generation is not instantaneously available with a loss in frequency of less than one-half cycle per second—1/120th of a second—the system will suffer a frequency disturbance that can cascade, trip out other generating units, and shut down the entire system.

negotiation with Florida Power. When they were unable to come to terms, the City filed an "Application for Interconnection and Complaints Against Unlawful Actions"[7] with the Commission.

Pursuant to this application a hearing was held. The Presiding Examiner found that an interconnection was clearly in the public interest since the City would be relieved of the necessity of maintaining and adding to its present inordinately large and inefficient generating reserve. Under the terms of the recommended order Gainesville would have an additional reserve capacity equal to the size of its largest generator, would save approximately $300,000 per year[8] in investment and operating cost even after paying the cost of the interconnection,[9] and would have the reliability of a bulk power supply that it could have not previously achieved.

The Presiding Examiner found, however, that the benefits of the interconnection flowed in the direction of the City's system. Florida Power, because of the relatively small size of the City's generators, would receive no

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[7] The City's charges of unlawful activity relate to the direct competition between the City and Florida Power in rural Alachua County. See note 1, *supra*.

[8] The Presiding Examiner found that the savings would be "in excess of $300,000." The Commission staff submitted a study showing Gainesville would realize investment and operating savings from reduction of its installed reserve of generation averaging about $231,000 a year for the period of 1970 through 1979. Florida Power witnesses estimated these savings at $520,000 a year.

[9] The Commission and Presiding Examiner agreed that the City should bear the whole cost of building the physical facilities necessary for the interconnection. This will cost between $1,500,000 and $3,000,000 depending on the length of the transmission lines the City chooses to use.

significant additional reliability.[10] Because of the automatic nature of the interconnect, however, Florida Power will sell some power to the City in non-emergency situations, but these periods will be rare because the City has already built up large quantities of excess capacity that can be used to meet high demand periods. The Presiding Examiner recommended that, even though no additional facilities would be needed and there would be no undue burden on the Florida Power system, Florida Power should be compensated.

He recommended that no set demand charge be imposed on the City. Instead, he recommended that "the total operating benefits in dollars received by each party by reason of the interconnection be computed based on the respective estimates of savings to each, and payment of 50 percent of the difference be made by the party receiving the greater benefit by reason thereof to the party less advantaged . . . ."

The Commission agreed that the interconnection was in the public interest. It concluded, however, that no compensation should be paid. Its decision was based on a policy of responsibilities which it phrased this way:

> "As a general proposition we note that whenever two electric systems with generating capacity undertake to interconnect and operate in parallel it is necessary for them to consider the nature of their

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[10] The Presiding Examiner concluded that Gainsville could contribute only 6 mw, 3 mw, and 2.5 mw to Florida Power's system reliability. It seems clear that these amounts are too insignificant to have meaning or value to Florida Power, which must have emergency power instantaneously available (spinning reserve) to withstand outages or more than 400 mw. Moreover, Florida Power's backbone transmission network has so many power sources more efficient and economical than Gainseville's small generators it is totally unrealistic to consider the City's system a significant power source.

respective electrical resources and individual system utility responsibilities, both as a means of evaluating the particular services to be rendered between the connecting systems and in order to ensure that appropriate compensation is afforded, either through service exchanges or financial payments. Marked disparities between two (or more) systems in the reliance placed upon the network should be reflected in the terms and conditions of the interconnection arrangement through appropriate provisions. Each participant should bear its proportionate share of that responsibility. In our judgment, a prerequisite to viable and effective interconnected operations among all electric systems is an equitable sharing of the responsibilities of interconnected operation. Each participant should bear its proportionate share of that responsibility. In doing so, each interconnecting system will meet its utility responsibilities and there will be no economic penalties for being the last one on the interconnected network." [11]

Pursuant to that policy it concluded that payment for the energy actually used and the City's assumption of the cost of the interconnection adequately compensated Florida Power. As expected revenues from all types of services called for by the compulsory interconnect bear upon compensation, the order prescribed the rates, etc. for the three types of services set out in paragraph 7(d), (e)

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[11] City of Gainesville v. Florida Power Corp., 1966, — F.P.C. —, —.

and (f), which are not to provide instantaneous emergency reserves.[12]

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[12] The terms and conditions of the services are set out in paragraphs seven and eight of the order:

"(7) The terms and conditions of the sale and exchange of electric energy following the effective date of the interconnection, and thereafter, unless and until modified by rate schedule filing completed in accordance with Part 35 of the Commission's Regulations under the Federal Power Act or modified by Commission order, shall be as follows, subject to modification by written agreement of the parties and acceptance by the Commission of such modification:

(a) Installed Reserves: Gainesville shall own or provide generating capacity resources equal to or greater than 115 percent of Gainesville's estimated annual peak-hour demand. The estimated peak-hour demand for any year shall be that given for the calendar year in Schedule 19 of the latest FPC Form 12 Report filed by Gainesville with this Commission, unless otherwise agreed to in writing by the parties.

(b) Economy Energy: If the parties engage in economy energy transactions, payment therefor shall be at the rate per kilowatt hour of one-half the sum of the incremental cost of providing the energy from the seller's resources plus the incremental cost that would have been incurred by providing the energy from the buyer's resources.

(c) Operating Reserves: Gainesville shall maintain spining and ready reserves in accordance with procedures established by the Florida Operating Committee up to a limit of 15 percent of Gainesville's estimated annual peak-hour demand for ready reserves and up to a limit of 10 percent of that demand for spinning reserves.

(d) Inadvertent Energy Transfers: Inadvertent transfers of energy shall be returned by the receiving party in an amount equal to that received and at comparable times, or shall be paid for as specified in paragraph (7)(g) below.

(e) Emergency Electric Service: Emergency electric service provided for a period of less than 60 minutes shall be treated as Inadvertent Energy Transfer (see paragraph (7)(d) above). Such service, if provided beyond the end

## II.

## Jurisdiction

Florida Power makes a frontal assault upon the Commission's action by a challenge to the Commission's au-

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of a 60 minute period shall be treated as Scheduled Electric Service (see paragraph (7)(f) below).

(f) Scheduled Electric Service: To the extent of its ability to do so, each party shall provide power and energy to the other for scheduled maintenance of generating or other facilities. Payment shall be in accordance with paragraph (7)(g) below.

(g) Payments: Except for payments related to Economy Energy transactions, described under paragraph (7)(b) above, payments shall be as follows:

(1) Inadvertent energy, if not returned in kind shall be paid for upon 30 days' notice given by the delivering party at the rate of 4 mills per kwh, or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the point of interconnection.

(2) Scheduled Electric Service shall be paid for at the rate of $.05 per kw per day for each kw of actual or scheduled demand, whichever is greater, if paid for by Gainesville or whichever is smaller if paid for by Florida Power, plus 4 mills per kwh or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the Archer Substation.

(8) Gainesville shall reimburse Florida Power for the annual cost associated with providing frequency regulation for its control area until such time as Gainesville installs tie-line bias control equipment in its own system and assumes responsibility for regulation of its own control areas. Florida Power is directed to submit to the Commission a proposed rate schedule covering this type of service. If the parties cannot agree on how to classify Florida Power's costs associated with the frequency regulation function or on a method of allocating such costs to Gainesville, the Commission shall make the determination of the annual payment due from Gainesville to Florida Power after receiving the views and supporting calculations of each party."

thority to act upon the petition of a generating municipal system. The argument is that Section 202(b) of the Federal Power Act, 16 U.S.C.A. § 824a(b) (see note 2, *supra*), only authorized the Commission to compel a public utility to establish a physical connection with "one or more *persons* engaged in the transmission or sale of electric energy" (emphasis added). The argument then turns to section 3, the definitional section of the statute, 16 U.S.C.A. § 796,[13] and points out that "person" is defined as "an individual or a corporation" and then that section 3(3) defines "corporation" to expressly exclude municipalities. Florida Power also points out that Section 201(f), 16 U.S.C.A. § 824(f), specifically provides that no

> "provision in this Part [II, which includes Section 202(b)] shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing . . . unless such provision makes specific reference thereto."

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[13] "The words defined in this section shall have the following meanings for purposes of this chapter, to wit:

* * *

(3) corporation means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include municipalities as hereinafter defined;

(4) person means an individual or a corporation

* * *

(7) municipality means a city, county, irrigation district, drainage or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing or distributing power. . . .

16 U.S.C.A. § 796.

Despite the apparent cogency of the argument this use of the definitional section of the statute as a limitation on the scope of the Commission's jurisdiction has previously been rejected. In *United States* v. *Public Utilities Commission*, 1952, 345 U.S. 295, 73 S.Ct. 706, 97 L.Ed. 1020 the Court held that the definitional section did not limit the Commission's authority over rate regulation.[14] In addition, in *New England Power Co.* v. *FPC.*, 1 Cir., 1965, 349 F.2d 258 the First Circuit held that the definitional sections did not limit the power of the Commission to order an interconnection between a public utility and a nongenerating municipality.

Florida Power also argues that, independent of the language of the statute, the legislative history shows that generating municipalities were not "persons" for purposes of Section 202(b). This argument is more viable than the one limited to the language of the statute since

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[14] The Court relied heavily upon the legislative history to demonstrate that the definitional sections were not controlling. The Court said that it did not "find any evidence of conscious coordination of §§ 3(3), (4) and 201(d) from the legislative history. True, they were simultaneously enacted, and, in fact, the interpolation of the word 'person' into § 201 (d) occurred after the §§ 3 (3) and 3 (4) definitions were in existence in S 2796, 74th Cong., 1st Sess., as passed by the Senate and reported to the House, June 13, 1935. But this alteration came at the insistence of the House. The Senate had provided for jurisdiction over sales occurring before or after interstate transmission, id., § 201 (f), and the House amendment, from which § 201 (d) in its present form stemmed, covered sales during the transmission across state lines for the first time. So the House Report is, we think, significant in its redefinition of the section: A 'wholesale' transaction is defined to mean the sale of electric energy for resale. HR Rep. No. 1318, 74th Cong., 1st Sess., p. 8. We conclude, therefore, that the Congress attached no significance of substance to the addition of the word person, and in fact did not intend it as a limitation on Commission jurisdiction. Indeed quite the contrary was sought by the House amendment of § 201(d)."

345 U.S. at 313, 73 S.Ct. at —, 97 L.Ed. at 1036.

both the Supreme Court and the First Circuit specifically reserved the question of whether a "municipality which generates as well as distributes electricity is to be regarded as a 'person' under this section of the Act." *New England Power Co.* v. *F.P.C., supra,* 349 F.2d at 263. See also *United States* v. *Public Utilities Commission, supra,* 345 U.S. at 312-13, 73 S.Ct. at ——, 97 L.Ed. at 1036-37. Moreover, Florida Power's position seems to draw support from the statements of the principal draftsmen of the Act, Federal Power Commissioner Clyde L. Seavey and Mr. Dozier A. DeVane,[15] Solicitor for the Commission. And such statements may be powerful indicia of legislative intent and purpose. *Zuber* v. *Allen,* 1969, —— U.S. ——, ——, 90 S.Ct. ——, ——, 24 L.Ed.2d 345, 354.[16]

On closer examination, however, it is apparent that the statements of Commissioner Seavey and Solicitor DeVane refer only to the Commission's power to order public utilities to act as transporters of—"wheel"[17]—low cost government power to a government customer at

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[15] Later a United States District Judge.

[16] In *Zuber* the Court said: "It would be perverse to assume that congressional drafters, in eliminating ambiguity from the old act, were careless in listing their exceptions and selecting the illustrations from which the Committee Report from which their words would ultimately derive content." — U.S. —, — S.Ct. at —, 24 L.Ed.2d at 356. It should also be noted that the Supreme Court has previously used this testimony as an indication of legislative intent. In United States v. Public Utilities Comm., *supra,* the Court said that there "is evidence . . . that the exclusion of producing municipalities from Commission jurisdiction was intended. For instance, DeVane, Solicitor of the Federal Power Commission at the time, testified as follows before the Senate Committee . . . [excerpts from testimony]".

[17] Wheeling is where A, which has excess generating capacity, seeks to transmit power to its customer C with whom it has no transmission connection, by using the transmission facilities of B, which has connections with both A and C.

the expense of a privately owned company. See, e.g., *Hearings Before the Committee on Interstate and Foreign Commerce*, House of Representatives, on H.R. 5423, 74th Cong., 1st Sess. (1935), 394, 395, 397, 532, 546, 559, 564; *Hearings Before the Committee on Interstate Commerce*, Senate, on S. 1725, 74th Cong., 1st Sess. (1935), 257, 260, 271. And, although there are general statements by them that do not necessarily refer to "wheeling" see e.g., Senate Hearings, *supra* at 256, after close examination of the entire legislative history we can find no support for the conclusion that municipalities which generate their own power were to be treated differently from nongenerating municipalities concerning anything other than "wheeling".[18]

## III.

### The Terms of the Ordered Interconnection

Even though the Commission has jurisdiction to order this interconnection and even though the connection is "necessary or appropriate in the public interest" and the interconnection will not put an "undue burden . . . upon" the facilities of Florida Power or "impair its ability to render adequate service to its customers", the terms of the interconnection do not adequately satisfy the statutory requirements[19] because they do not provide Florida Power with the "reimbursement reasonably due" it. See 16 U.S.C.A. § 824a(b), (see note 2, *supra*). This interconnection will be of substantial benefit only to the City.

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[18] From the legislative history cited by the Court in the *California Utilities* case, *supra*, it is apparent that when it specifically reserved the question of generating municipalities it was referring to the problem of "wheeling". See United States v. Public Utilities Commission, 345 U.S. at 312-13, 73 S.Ct. at —, 97 L.Ed. at 1036-37.

[19] Although Florida Power makes a constitutional attack upon the Commission's action, we find it unnecessary to pass upon the questions raised.

Through the interconnection it receives essential emergency back-up, which is a service at all times instantaneously available, and which protects it against the outage of the largest of its generators. (See IC, *supra*). The benefits to Florida Power, however, are largely illusory.[20]

But, although there is no direct cost, Florida Power, really its customers, will bear a substantial burden. They must bear the allocated fixed cost represented by the added obligation imposed under the terms of the ordered interconnection. And this burden will be reflected in their cost-based rates. They are entitled to not have to carry

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[20] The Commission indicated that it believed Florida Power would receive certain vague but substantial benefits as a result of the interconnection. These vague benefits were (i) possible deferral of future generating units because of coordinate planning of new facilities, (ii) the electrical operating benefits from the availability of the City's small power contribution, and (iii) the possibility of additional reliability from the City's contribution since Florida Power does not have generators in the immediate area (see note 10, *supra*). But these benefits are unrealistic as well as vague. Florida Power's largest present unit has a 527 mw capacity and a 875 mw unit is scheduled to be in operation in 1972. Obviously, any savings from coordinated planning with a system with the largest generator with only a 50 mw capacity are highly theoretical. And the Commission did not even suggest how the interconnection with the City was to contribute operational savings and reliability (reliability is the most unrealistic of all, see note 10, *supra*) to Florida Power.

The Commission's conclusions were, however, tentative as well as vague and unrealistic—"If we were to appraise Florida Power's request for an annual standby charge in terms of 'splitting of the benefits' test . . ."—and are not fact-findings protected by the umbrella of the substantial evidence test. As Mr. Justice Frankfurter said in SEC v. Chenery Corp., 1943, 318 U.S. 80, 93, 94, 63 S.Ct. 454, —, 87 L.Ed. 628, 636, "Its action must be measured by what the Commission did, not what it might have done". See Schaffer Transportation Co. v. United States, 1957, 355 U.S. 83, 78 S.Ct. 173, 2 L.Ed.2d 117; 2 K. Davis, Administrative Law Treatise §§ 16.05, 16.09 (1958).

the entire responsibility for providing an extremely valuable service.

The Commission's policy of proportionate utility responsibility really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large system, however, receives no benefit but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation.

Thus we deny enforcement of this order insofar as no provision for the reasonable compensation of Florida Power is made. The remainder of the order, however, is enforced, and compliance need not be delayed until the amount Florida Power is to be paid is determined by the Commission and that determination reviewed.

But in sending this case back to the Commission for it to fix a formula for computing what would be reasonable compensation, we do not even whisper what that formula should be. On reconsideration the Commission may determine that the set demand charge requested by Florida Power is a reasonable formula. It may determine that the 50 percent-of-the-difference-in-benefits formula of the Presiding Examiner is more appropriate. It may decide to use parts of both, neither formula, or a completely different formula. This is for the Commission subject to later review.

ENFORCEMENT GRANTED IN PART AND DENIED IN PART.

## 2. Judgment of Court of Appeals

JUDGMENT

This cause came to be heard on the petition of Florida Power Corporation, for review of an order of the Federal Power Commission in Docket No. E-7257, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the order of the Federal Power Commission in this cause be, and the same is hereby enforced in part and denied in part, in accordance with the opinion of this Court.

It is further ordered that petitioner pay two-thirds (⅔) of the costs on appeal in this Court and that respondent pay one-third (⅓) of said costs.

May 1, 1970

## APPENDIX B

### 1. Main Opinion of Federal Power Commission

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge, and John A. Carver, Jr.

Docket No. E-7257

GAINESVILLE UTILITIES DEPARTMENT

and

CITY OF GAINESVILLE, FLORIDA

v.

FLORIDA POWER CORPORATION

Opinion No. 550

OPINION AND ORDER DIRECTING PHYSICAL INTERCONNECTION OF TRANSMISSION FACILITIES AND PRESCRIBING TERMS AND CONDITIONS THEREOF

(Issued November 5, 1968)

O'CONNOR, Commissioner:

This proceeding arises out of an Application for Interconnection and Complaint Against Unlawful Actions filed under the Federal Power Act on November 22, 1965, by the Gainesville Utilities Department and the City of Gainesville, Florida (both referred to as Gainesville or City). Gainesville requests (1) an order under Section 202(b) of the Act directing Florida Power Corporation (Florida Power or Corporation or Company) to establish a physical interconnection with Gainesville, and to sell and exchange energy with Gainesville; (2) an order re-

quiring Florida Power to cease certain practices which allegedly discriminate against Gainesville and violate Sections 205 and 206 of the Act; and (3) an order requiring Florida Power to desist from certain actions which allegedly are in restraint of trade and violate Section 10 of the Act.

Florida Power filed a motion to dismiss Gainesville's application and complaint, alleging lack of jurisdiction. Florida Power also filed an answer to such complaint. On April 19, 1966, the Commission directed a hearing on the issues raised by the parties. Hearings were held at various times between November 16, 1966, and March 16, 1967, at Gainesville, Florida, at St. Petersburg, Florida, and at Washington, D. C.

On January 17, 1968, the Presiding Examiner, Martin E. Rendelman, issued an initial decision in which he (1) denied Florida Power's motions to dismiss; (2) ordered a connection between Florida Power and Gainesville, subject to the condition that the parties first negotiate an agreement to eliminate and avoid all duplication of facilities; (3) prescribed the terms and conditions covering the sale and exchange of electric energy; (4) found that an order for interconnection renders moot Gainesville's complaint that Florida Power is violating Sections 205 and 206 of the Act; and (5) found that the evidence does not establish the alleged violations by Florida Power of Section 10 of the Act.

This proceeding is before the Commission on the examiner's decision, exceptions filed by Gainesville, Florida Power, and staff, and oppositions to such exceptions filed by the respective parties. Oral argument was held before the Commission on July 9, 1968. The basic issues involve (1) the jurisdictional question; (2) the conditioning of the interconnection order; and (3) the prescription of rates of payment between the parties.

### *Holding*

For the reasons set forth below we find that the examiner was warranted in denying Florida Power's motions to dismiss and in ordering the interconnection. We further find that the order for interconnection should not be qualified by the pre-condition prescribed by the examiner, and that certain changes are appropriate in the rates proposed by the examiner.

### *Background*

The City of Gainesville owns an isolated electric generation, transmission, and distribution system, valued at $21,104,036,[1] which is operated by the Gainesville Utilities Department. This system serves 17,212 retail customers in a 22 square mile area covering the City and adjacent portions of Alachua County, Florida. In 1965 Gainesville's generating plant had a total capability of 108.4 mw as against a peak load of 51.1 mw. The system's reserve capacity was 57.3 mw or 112.1 percent of peak demand. Gainesville anticipates a peak load of 102 mw by 1970.

Florida Power is a "public utility" subject to the jurisdiction of the Commission. Its system, currently valued at $500,000,000, includes substantial generation, transmission, and distribution facilities. Florida Power is interconnected with and operates in parallel with the Interconnected Systems Group and with the Florida Power & Light Company, Tampa Electric Company, Orlando Utilities Commission, and the City of Jacksonville. Florida Power presently serves 370,000 retail customers, and it supplies power at wholesale to 12 municipal distribution systems and to nine REA cooperatives. Florida Power's service area covers 20,600 square miles in west, northwest,

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[1] Unless otherwise stated, the statistics in this opinion usually reflect operations for the year 1965 or in some cases 1966, as set forth in the evidence of record in this proceeding.

and central Florida, and includes Alachua County as well as 31 other counties.

Florida Power's generating plants have a capability of 1595 mw. Peak load for the system was 1232 mw in 1966. The Corporation is installing a 525 mw unit for service in December 1969, and it is planning to install a 875 mw nuclear-fueled unit for service in mid-1972. Florida Power estimates its annual growth rate is about seven percent or currently 100 mw per year, and it anticipates a peak load of 1826 mw for 1970.

*Gainesville's Proposal for Interconnection*

Gainesville proposes to establish a physical connection with Florida Power's transmission system by constructing a 115 kv line to the Corporation's Archer Substation on Florida Power's 230 kv line from Fort White to Silver Springs, Florida. Gainesville proposes to install a 230/115 kv step-down transformer with a capacity of 36/60 mva, or, as recommended by staff, of 60 mva. The cost of this installation, including transmission line, transformer, and related equipment, is estimated at $1,500,000 if seven miles of 115 kv line are required, and at double this amount if 14 miles of 115 kv line are constructed all the way to Gainesville's own generating plants. Gainesville plans that the interconnection will be operated closed at all times except when opening is required for safety, maintenance, or repairs.

Gainesville contends that the interconnection will be in the public interest because it will enable the two systems to exchange economy energy, pool their reserves, exchange capacity, and coordinate construction of generation at substantial financial savings to both; that it will place no undue burden upon Florida Power; and that it will not require Florida Power to enlarge its generating facilities. Florida Power, on the other hand, asserts that the Commission is without jurisdiction to act on Gainesville's appli-

cation, but it adds, without waiving its legal position, that it will be agreeable to a voluntary connection under conditions which will safeguard its service area, protect it from wasteful competition, and assure payment of reasonable compensation for its services. As of this date, Gainesville and Florida Power have not been able to reach an agreement on the conditions proposed by Florida Power.

*The Question of Jurisdiction*

Florida Power maintains that Gainesville, as a municipal corporation, is not a person within the meaning of Section 202(b) of the Act, and that the Commission therefore has no authority to order the proposed interconnection. We find no merit in this argument which plainly is based upon an incorrect interpretation of the meaning of Section 202 (b). Florida Power's contention is similar to arguments which were previously raised and were rejected by us in *Shrewsbury Municipal Light Department* v. *New England Power Co.*, Opinion No. 438, 32 FPC 373, (1964), *affirmed, sub. nom., New England Power Co.* v. *Federal Power Commission*, 349 F. 2d 258 (CA 1, 1965); *Crisp County Power Commission*, v. *Georgia Power Company*, Docket No. E-7120, Tentative Opinion No. 508 (1966); *City of Paris, Kentucky* v. *Kentucky Utilities Co.*, Opinion No. 525 (1967), remanded on other grounds in *City of Paris* v. *Federal Power Commission*, — F. 2d — (CADC, July 3, 1968). The examiner correctly denied Florida Power's motion to dismiss.

*The Basis for Interconnection*

The statutory provisions which govern this proceeding are those set forth in Section 202(b) of the Federal Power Act. This section provides that the Commission may order an interconnection when it finds that such action is necessary or appropriate in the public interest, and when it also finds that no undue burden will be placed upon the public utility affected by the order. The Commission's authority

is specifically limited by two qualifications: (1) it shall not compel the enlargement of generating facilities for the purpose of the interconnection order; and (2) it shall not compel the affected public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers.

Applying these standards, this record affirmatively shows that the proposed interconnection between Corporation and Gainesville is desirable and in the public interest. Each system will gain financial and engineering benefits from the interconnection. The record also shows that the ordered interconnection will not place an undue burden upon Florida Power, will not require the Corporation to enlarge its generating facilities, and will not impair Florida Power's ability to render adequate service to its customers. Our reasons are set forth in detail hereafter.

In addressing them we deem it important at the outset to emphasize a basic distinction which was not articulated by the Examiner but is central to our analysis. We refer to the initial step of evaluating the electrical resources to be operated under interconnected conditions and as a part of that process to distinguish those factors which involve system electric reliability or the capacity to serve, from marketing or pricing policies which a utility may adopt in selling electric power and energy in bulk at the wholesale level. These differing considerations tend to be obscured in the opposing economic arguments advanced by Florida Power and Gainesville with respect to their proposed terms and conditions for operating in parallel. Hence, the restatement of the specific contentions of the parties, without more, creates difficulty in understanding the resolution which we make of one of the major disputes in this case: Florida Power's request for a standby charge to Gainesville equal to $3.08 times the installed capacity of the City's largest generating unit. As a part of our overall assessment of the benefits and responsibilities of Gainesville and Florida Power in operating under inter-

connected conditions, we have evaluated their respective electrical resources, including the generating units of both and the effect of adding Gainesville as an additional point of connection upon Florida Power's system.

As a general proposition we note that whenever two electric systems with generating capacity undertake to interconnect and operate in parallel it is necessary for them to consider the nature of their respective electrical resources and individual system utility responsibilities, both as a means of evaluating the particular services to be rendered between the connecting systems and in order to ensure that appropriate compensation is afforded, either through service exchanges or financial payments. Marked disparities between two (or more) systems in the reliance placed upon the network should be reflected in the terms and conditions of the interconnection arrangement through appropriate provisions. Each participant should bear its proportionate share of that responsibility. In our judgment, a prerequisite to viable and effective interconnected operations among all electric systems is an equitable sharing of the responsibilities of interconnected operation. Each participant should bear its proportionate share of that responsibility. In doing so, each interconnecting system will meet its utility responsibilities and there will be no economic penalties for being the last one on the interconnected network.

Here the City and Corporation agree that an electrical interconnection should be established. Their basic differences reflect a series of economic and financial considerations; chiefly, what operating responsibilities each should bear, and what charges should be assigned to each system.

*Uses of the Proposed Interconnection*

All parties agree that the contemplated interconnection would be used initially as follows: for purposes of sharing

generating reserves between Florida Power and Gainesville; to facilitate the exchange of hourly non-firm economy energy transfers between the two systems; for weekly or other short term purchases of electrical capacity and related energy by the Corporation or the City; to permit either system to supply to the other replacement energy during periods of scheduled outage for equipment maintenance purposes; and to meet system electric needs during emergency outages of operating equipment of the City or Florida Power.

The degree to which these various types of service will be utilized by either party is a matter for decison by personnel of Florida Power and Gainesville. Electrical flows between the systems to complete economy energy transactions, short term sales of electric capacity and related energy, maintenance replacement energy and emergency service will be controlled by the system dispatchers.

In addition to scheduled transfers between Florida Power and Gainesville, there will be non-scheduled or inadvertent flows through the proposed interconnection. These flows will be instantaneous and occur as generating sources and connected electric loads shift. Depending upon the originating cause they may be in the direction of Florida Power or in the direction of Gainesville.[2] As in the case of scheduled flows, the ultimate limiting factor controlling the magnitude of the inadvertent transfer in either

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[2] Flows in either direction may reflect occurrences on the Florida Power or Gainesville systems, the systems of other members of the Florida Operating Committee with which the Corporation interconnects, or the systems of utilities operating outside the State of Florida which are electrically connected with Florida Power. Presently, approximately 94 percent of the total installed generating capacity of the Nation's electric utilities is interconnected and operates in electrical synchronism, including members of the Florida Operating Committee.

direction is the electrical capacity of the facilities to be installed between the Company and City, 60,000 kva.[3]

*Uses of System Generating and Transmission Facilities*

Under the terms and conditions of the interconnection as specified in this opinion and order, each system (Florida Power and Gainesville), will be responsible for its own generating capacity and reserve requirements.

We accept and approve the Examiner's conclusion as to the installed and operating reserves of Gainesville and Florida Power. As expressed in this opinion, we are satisfied that an appropriate basis has been shown for evaluating Gainesville's generating resources and for assigning to the City a reserve responsibility. Briefly, they are those requirements which apply to Florida Power as a member of the Florida Operating Committee, and those which the Corporation applies to itself by reason of its utility operating practices.

As set forth in finding (7) (a), Gainesville is required to own or secure from others generating capacity equal to or greater than 115 percent of the City's estimated annual peak hour demand. Under finding (7) (c), Gainesville must maintain ready reserves up to a limit of 15 percent of the City's estimated annual peak hour demand and up to a limit of 10 percent of that demand for spinning reserves.

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[3] Various briefs of Florida Power denominate these inadvertent transfers as instantaneous emergency service. They are urged as a principal justification for the Corporation's requested "standby charge" of $3.08/kw up to the capacity of the City's largest generating unit. Gainesville does not seek to apply any such charge against the Company. Florida Power does not assess a similar charge against any other system with which it interconnects, nor does any other member of the Florida Operating Committee. Indeed, the staffs review of pooling agreements and bilateral arrangements between large and small systems described in the record did not reveal any other example of such a charge.

In the light of current reserve practices being followed by Florida Power and other members of the Florida Operating Committee, these requirements will insure that Gainesville discharges its utility service obligations to provide sufficient generating capacity and resources, installed and operating, to supply the needs of its utility consumers.

Following completion of the proposed interconnection, Gainesville's transmission facilities (principally the 115 kv line to be constructed from the City's existing circuits to the point of interconnection at Florida Power's Archer Substation) will function as a means of interconnecting the City's system with that of Florida Power. Florida Power's transmission network functions, and will continue to function, as a means of interconnecting the Corporation's own generating, purchased power and interchange sources and for delivering power to the Corporation's load centers. After connection, Gainesville will become an additional interchange power source on that network.

*Compensation*

Gainesville has agreed to absorb the entire cost of the facilities needed for the proposed interconnection. There will be no direct facilities cost to Florida Power. Depending upon final construction plans, the City's capital costs for this purpose will be in the order of $3,000,000. This investment will be required for about 15 miles of 115 kv transmission from Florida Power's Archer Substation to the City's generating station including transformation facilities at both ends.

Insofar as the proposed interconnection is used for economy energy, maintenance replacement energy and emergency service, we adopt the types of compensations (financial payment or return in kind) to Gainesville and Florida Power as set forth in the Examiner's decision and findings (7)(b), (d), (e) and (g) (1) below. The parties do not object to the Examiner's decision in these respects.

Gainesville and Florida Power both filed exceptions to the Examiner's finding in paragraphs (7)(f) and (7)(g) that scheduled electric service shall be paid for at the rate of $.08 per kw per day. Gainesville maintains that the rate should be $.05 per kw per day for both parties. Florida Power states that it is willing to sell to Gainesville at the rate of $.05 per kw per day, but it contends that it should pay Gainesville less than $.05 per kw per day because Gainesville's total fixed charges are lower on a percentage basis than Florida Power's. Upon the showing of this record, we find that the rate of $.05 per kw per day is appropriate for both parties.

We note that one responsibility of interconnected operation has not been specifically mentioned in the examiner's initial decision. Florida Power and the other members of the Florida Operating Committee each incur annual costs associated with providing frequency regulation for its own control area. Until such time as Gainesville installs an interconnection with another member of the Florida Operating Committee, Gainesville will be within the control area of Florida Power. Staff testified that it would be appropriate for Gainesville to make an annual payment to Florida Power which would represent its proportionate contribution toward Florida Power's annual costs for providviding regulation in the control area and that such annual payment should be terminated when Gainesville installs tie-line bias control equipment in its own system and thereby assumes responsibility for regulation of its own control area. We agree. Accordingly, Florida Power will be directed to submit a proposed rate schedule covering this type of service. If the parties cannot agree on how to classify Florida Power's costs associated with the frequency regulation function or on a method of allocating such costs to Gainesville, the Commission shall make its own determination of such annual payment after receiving the views and supporting calculations of each party.

These charges for services, of which either party may avail itself,[4] will adequately compensate both Florida Power and Gainesville in providing the services. The reserve capacity which we are requiring Gainesville to maintain will assure that Gainesville does not unduly burden Florida Power. The record in this case demonstrates that Gainesville will place no disproportionate burden or reliance on the facilities of the Corporation and thus should not be penalized either in terms of greater reserve capacity requirement than that carried by the other systems in the coordinating area or in terms of a demand charge.

*The Standby Charge*

Under present conditions Florida Power's request for a standby charge would impose an annual payment approximating $150,000 upon Gainesville. The Examiner rejected Florida Power's recommendation and in lieu thereof proposed that the total operating benefits in dollars received by each party by reason of the interconnection shall be computed based on the respective estimates of savings to each, and payment of 50 percent of the difference shall be made by the party receiving the greater benefit to the party receiving the lesser benefit.

Florida Power excepted to the failure of the Examiner to approve its request for a demand charge of $3.08 per kw per year, multiplied by the 50,000 kw capability of Gainesville's largest generator, but generally found the Examiner's 50-50 split proposal satisfactory, provided that the parties could overcome the administrative difficulties expected to be encountered in computing the annual savings in dollars. Gainesville and staff, on the other hand, filed exceptions to the Examiner's proposed 50-50 split of bene-

[4] We emphasize that in this particular case neither Florida Power nor Gainesville is being directed to provide any specific firm power service to the other.

fits. Gainesville argued that such a procedure would be too vague and general even when applied only to the so-called "operating benefits", and in any event could not be applied to all of the types of benefits possible. Staff contended further that the Examiner's proposal was unwarranted and inappropriate; that such proposal could not be justified as a substitute for Florida Power's emergency demand charge; that the difference in operating benefits to the parties from the interconnection would not be sufficient to warrant the condition; and that the proposal was not consistent with prevailing industry practice.

We agree with Gainesville and with staff that the record in this proceeding does not establish any satisfactory justification for the imposition of a per kw demand charge as requested by Florida Power. We are also of the opinion that the 50-50 split proposal of the Examiner is not appropriate.

The reasoning of both Florida Power and the Examiner is inconsistent with what we have determined to be the appropriate analysis of the basic issues here presented: sharing the responsibilities of interconnected operations. As we have explained, that sharing must be based upon, and follow, the proportionate burdens each system places upon the interconnected system networks, not the benefits each expects to receive. Benefits received in any given situation may approximate these responsibilities or they may not. In the course of negotiation of voluntary pooling arrangements, benefits received may, on occasion, serve to offset burdens imposed in determining the appropriate charge for particular services rendered or facilities supplied. But where, as here, the cost of providing such services and facilities and the appropriate charges therefor have equitably been determined after a careful analysis and apportionment of the burdens and responsibilities of each party, there is no basis for any further consideration of relative benefits as proposed by the Examiner.

The evidence before us shows that Gainesville will be contributing its proportionate share of instantaneous emergency service and installed generating capacity, including reserve capacity.

Moreover, the specific type of demand charge requested by Florida Power, namely, the imposition of a charge based upon the size of Gainesville's largest generating unit, would discourage future coordinated planning and operation by reducing the economic incentive for Gainesville to install larger and more efficient generating units. Without such a demand charge, Gainesville could participate more fully in coordinated planning including staggered construction with Florida Power and other systems in Florida to the mutual benefit of all such systems.

If we were to appraise Florida Power's request for an annual standby charge in terms of a "splitting of the benefits" test, this record shows that the proposed intertie will afford both parties opportunities to take advantage of substantial and important benefits: electrical operating benefits and corporate financial savings.

The financial benefits are those which could result from coordinated planning and more intensive utilization of existing generating resources. Savings from coordinated planning of new facilities might involve deferral of future generating units or revisions in power supply contracts with other systems. As to the electrical operating benefits, this record shows that the City will have an additional 60,000 KVA energy source continuously connected to the City's distribution circuits. For the Company, the interconnection will add an additional energy source to its network in a geographic area where the Company has a substantial load (customer demands), but does not have generating plants of its own. Because of that, the expected benefit to Florida Power may be very substantial since the governors have a faster rate of response setting than Florida Power's. Also of great importance to Florida

Power is the improved system reliability which the Company will gain through the proposed intertie. That is shown in studies submitted by staff from engineering analyses of loss of load probabilities. They establish that the interconnection will have the effect of improving the reliability of Florida Power's system.

Turning to the particular facts which comprise Florida Power's principal justification for its $3.08/kw standby charge, this record shows a unit cost calculation based upon an assumed use of the Corporation's transmision network for service reliability and emergency back-up service and an assumed use for bulk power deliveries to the Corporation's own utility load centers. The Corporation estimates that its gross investment in its transmission network will total $65,000,000 as of 1970, and that 60 percent of this amount or $39,000,000 should be allocated to system reliability and emergency back-up service. It calculates the annual fixed charges on this $39,000,000 at $5,850,000. It states that Gainesville's proportionate share of such annual charges, at the rate of 15 percent of allocated investment, and assuming a combined load for the two companies of 1,900 mw in 1970, will be $3.08 per kw.

Florida Power's proposed additional standby charge for transmission availability (amounting to $150,000 per year), must be evaluated against the background of its failure to include a comparable charge in any of the contracts voluntarily negotiated with the other systems with which it is interconnected. In these circumstances, Florida Power plainly bears the burden of justifying an apparently discriminatory imposition in this one instance. The evidence falls far short of meeting this burden. The Corporation's allocation of 60 percent of its transmission system investment to service reliability and emergency back-up service is not supported by any engineering analysis as to its appropriateness. This allocation is, in fact, disputed by staff which claims that Florida Power failed to give adequate con-

sideration to certain advantages which the Corporation enjoys from its transmission system such as bulk energy deliveries, and the savings resulting from reduced capacity and energy costs made possible by the installation of larger generating units and by the maintenance of lower reserve requirements. Furthermore, Florida Power did not adduce any operating or engineering facts to establish that Gainesville derives any special operating benefit by reason of Florida Power's interconnecting transmission network apart from that gained by any individual system which is tied into an interconnected network. The affirmative showing of the record in this proceeding is that the proposed interconnection will provide important instantaneous emergency service to Florida Power from Gainesville.

Insofar as Florida Power's investment in its transmission system is concerned, we deem it appropriate to point out that the proposed interconnection will be accomplished at no direct cost to Florida Power. The cost to Gainesville, on the other hand, will approximate $3,000,000.

*The Examiner's Condition for Interconnection*

A competitive situation exists between Gainesville and Florida Power for customers in the Gainesville area. Gainesville also competes with Clay Electric Cooperative (Clay Electric). During the hearings evidence was submitted showing that since 1962 Gainesville has expanded its service into areas served by Florida Power and by Clay Electric, first by the annexation of adjacent territory to treble the size of the City, and second by the extension of its distribution lines beyond its new city limits into Alachua County. Gainesville negotiated a settlement with Clay Electric whereby it acquired the latter's facilities and customers within the annexed area, but it did not negotiate a similar agreement with Florida Power, and that Corporation continues to serve 22 of its customers within the new city limits. Florida Power also provides retail service to the University of Florida at Gainesville, and is now under

contract to continue such service until 1976.[5] Gainesville's extended distribution lines in certain instances duplicate and parallel those of Florida Power and Clay Electric. Prior to the hearings Gainesville constructed 16.2 miles of such duplicating lines at a cost of $165,000, resulting in annual fixed costs and operating expenses of $16,550.

Florida Power and Gainesville accuse each other of engaging in a wasteful duplication of service. On September 14, 1967, Florida Power petitioned the examiner to reopen the proceeding for the purpose of submitting additional evidence showing that Gainesville was intensifying its competitive efforts. The examiner denied the petition to reopen, stating that the allegations were cumulative to facts already in the record. Subsequently, on July 8, 1968, Florida Power petitioned the Commission to reopen the proceeding for the purpose of taking additional evidence showing that since the conclusion of the hearing, Gainesville has constructed approximately 19 miles of distribution lines paralleling and duplicating those of Florida Power, that these lines will serve approximately 35 new customers, chiefly residential and commercial users in new buildings under construction, and that Gainesville has also purchased the Westward Utilities, Inc., a private utility which formerly provided water and sewerage services to electric customers of Florida Power. For the reasons set forth below we are of the opinion that Florida Power's petition of July 8, 1968, does not set forth grounds which warrant the reopening of this proceeding.

Florida Power argued before the examiner that it should not be compelled to interconnect with Gainesville under circumstances whereby the advantages which Gainesville

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[5] The University of Florida was served by Gainesville prior to 1930. It was served by Florida Power from 1930 to 1935, and again by Gainesville from 1935 to 1948. In 1948 Gainesville advised the University that it could no longer serve it, and the University then resumed service from Florida Power.

would obtain from the interconnection could be used by Gainesville to assist it in continuing its competition against Florida Power. The examiner accepted Florida Power's argument to the extent that he found it to be in the public interest that the order for interconnection should be qualified by a condition precedent compelling the parties first to reach an agreement whereby the further duplication of facilities will be avoided.

Gainesville and staff filed exceptions to the examiner's condition. They assert that the imposition of the condition is tantamount to a denial of the interconnection because Florida Power will be placed in a position to insist upon territorial limitations which Gainesville will not accept. Gainesville and staff maintain that the benefits from the interconnection will far outweigh any possible detriment resulting from competition at the retail level, and they contend that the question of a territorial agreement should be left for future resolution by the parties after an interconnection has been accomplished. Staff further points out that the interconnection may readily provide the mechanism for decreasing the duplication of distribution facilities of the parties, whereas the continued electrical isolation of Gainesville will compel the City to plan and build larger generating units than it can utilize at all times to capacity, thus forcing it into more aggressive competition for new customers.

Florida Power generally supports the examiner's condition and states that under Florida law it is not expected to serve a competitor. Florida Power adds that it is willing to interconnect voluntarily with Gainesville and to sell and exchange capacity and energy on terms and conditions substantially in accord with those set forth in the examiner's additional findings and conclusions. It proposes a territorial agreement with Gainesville whereby it will turn over to Gainesville 22 residential customers and an ice plant now served by it within the City, and it offers to withdraw its service from any suburban area where Gainesville had con-

structed parallel distribution facilities as of the time of the hearings. Florida Power intends to continue its service to the University of Florida, and it asks that Gainesville respect the integrity of its revised service area for a period of 15 years.

In presenting their cases on this point Gainesville and Florida Power have relied extensively on decisions rendered by state and federal courts in related and separate areas of law. Notwithstanding such reliance upon precedent in the fields of state utility law, railroad law, and antitrust law, the standards which control are those set forth in Section 202(b) of the Act, which we discussed above.

The Commission is of the view that the competition between Gainesville and Florida Power, although understandably a matter of some annoyance to Florida Power is not currently of major importance. The record before us does not show that this competition, either at the present time or in the near foreseeable future, will impose any undue burden upon Florida Power, nor will it impair the stability or prosperity of Florida Power's $500,000,000 system. We find merit in staff's view that the interconnection may provide the opening mechanism for a program of cooperation between Gainesville and Florida Power, a program which eventually may enable the two systems to reconcile their differences and accomplish the elimination of wasteful duplication. We are also persuaded by staff's argument that the continued isolation of Gainesville will lead only to more aggressive competition on its part.

The foregoing discussion leads us to conclude that the public interest will not be served by the attachment of a condition precedent to an order for interconnection which may prevent the interconnection from being accomplished. The examiner's condition involves the undesirable risk that it can be self-defeating in that it may enable the intransigence of the parties, who thus far have not been able to reach an agreement on this matter, to prevent the intercon-

nection from being consummated. The issue of overriding significance here is that it is in the public interest that the electrical isolation of Gainesville be ended as quickly as possible. The parties do not disagree.

The arguments concerning competitive activities of Florida Power and Gainesville in their retail operations are basically economic contentions. Moreover, they bring into focus public policy considerations of the State of Florida —single or multiple power sources operating within specific retail service areas. Since we cannot resolve the question of whether a given area of Florida shall be served by one, two, or three utilities we see no reason why the result of retail operations of competing systems should control our judgment on whether bulk power facilities should be interconnected and operated coordinately. The regulatory jurisdiction conferred upon this Commission pursuant to Part II of the Federal Power Act does not extend to the regulation of retail rates, charges and services. That is expressly recognized as a matter of State concern. We are directing our Secretary to forward copies of this opinion to the Governor of the State of Florida, and to the Chairman of the Florida Public Service Commission. In doing so, we bring to their attention the showing of this record as to the duplication of retail service lines and competing retail electric operations of Florida Power and Gainesville.

*Other Exceptions*

We find no merit in Florida Power's exception to the examiner's ruling denying that Corporation's motion to strike staff testimony and exhibits relating to a showing that Florida Power and the other Florida electric utilities with which it is interconnected may benefit from the sale and exchange of firm power on a seasonal basis with the Southern System. The record shows that the question of seasonal diversity exchanges with the Southern System was introduced by Florida Power's own witness, and that the testimony submitted by staff's witness was appropriate in

furnishing perspective to the arrangement on diversity exchange between the Southern System and Florida Power.

We further do not agree with Florida Power that the examiner erred in failing to provide that Florida Power may purchase all or part of the 115 kv transmission line to be built by Gainesville so as to enable Florida Power to serve its customers within its service area. We do not find adequate record support for Florida Power's contention. On the basis of the evidence before us, Florida Power's concern on this particular issue appears to be premature and conjectural.

We note that the Examiner did not adopt the proposal by the staff that Gainesville and Florida Power be directed to set up a coordinating committee. We believe there is substantial merit and usefulness in such a committee and we therefore direct the parties to set up a coordinating committee to represent the parties in all matters arising from operations under the interconnection as hereinafter directed.

*The Complaints Under Sections 205, 206, and 10 of the Act*

The Examiner denied Florida Power's motion to dismiss Gainesville's cause of action under Sections 205 and 206 of the Act, wherein Gainesville alleged that Florida Power was discriminating against it by interconnecting with other electric utility systems and by refusing to interconnect with Gainesville. The examiner ruled that a Commission order directing Florida Power to connect its facilities with those of Gainesville rendered moot Gainesville's cause of action under the above sections. Florida Power takes exception to the examiner's ruling, stating that Sections 205 and 206 do not confer any authority upon the Commission to order the two systems to interconnect, and adding that the evidence of record does not establish any violation by Florida Power of these sections. We do not find Florida Power's argument on this point well founded. As staff correctly ex-

plains, the Commission has authority under Sections 205 and 206 to review the alleged practices of Florida Power which Gainesville asserted tended to discriminate against the City. Without passing at this time on the question as to whether or not Gainesville's complaint is well founded, it is sufficient for the purposes of this proceeding for us to find that the interconnection which we have ordered will remedy the situation which gave rise to Gainesville's complaint. The complaint before us on this particular point is thus indeed rendered moot.

The examiner also denied Florida Power's motion to dismiss Gainesville's cause of action under Section 10 of the Act. Florida Power alleged lack of jurisdiction and failure of proof. The examiner found that the evidence of record in this proceeding did not establish violation by Florida Power of Section 10(h) of the Act as alleged in Gainesville's complaint. Florida Power asserts error on the part of the examiner, claiming that the two rulings above are inconsistent, and it argues that a question of a violation of Section 10(h) of the Act is a matter for the courts rather than for the Commission. We do not agree with this contention. The Commission plainly has authority to ascertain whether a jurisdictional utility's wholesale rate arrangements are in violation of Section 10(h). See *Pacific Northwest Power Company, et al.*, Opinion No. 418, 31 FPC 247 at 274 (1964). The examiner's disposition of Gainesville's complaint under Section 10 is supported by the record, and we approve his action.

*The Commission further finds:*

(1) Florida Power Corporation is a public utility within the meaning of Section 201(a) of the Federal Power Act.

(2) The Gainesville Utilities Department and the City of Gainesville, Florida (both referred to as Gainesville), each is a "person" within the meaning of Section 202(b) of the Federal Power Act.

(3) It is necessary and appropriate for the purposes of Section 202(b) of the Federal Power Act, that the Commission order Florida Power to establish physical connection of its transmission facilities, with the facilities of Gainesville at the Archer substation location as set forth in Finding (4) below, to sell energy to and exchange energy with Gainesville upon the terms and conditions as ordered below. Such sale and exchange of energy will not place any undue burden upon Florida Power, nor require Florida Power to enlarge its generating facilities for such purpose, nor impair its ability to render adequate service to its customers.

(4) It is necessary and appropriate in the public interest that a physical connection be established on the transmission system of Florida Power at the location known as the Archer Substation on the Florida Power Suwannee-Silver Springs 240 kv transmission line. Such physical connection shall include the equipment necessary for a 240/115 kv transformation, in accordance with recognized engineering practice. Unless otherwise provided by written agreement of Florida Power and Gainesville, the facilities for such physical connection shall conform substantially with the facilities described in Exhibit 3. Gainesville shall provide or compensate Florida Power for providing the facilities necessary for a 60 mva interconnection at Florida Power's Archer Substation, and also shall provide a 115 kv transmission line and facilities for connecting same to the Gainesville system. The facilities shall be substantially as described in Exhibit 3, modified as necessary for a minimum of 60 mva capacity.

(5) Gainesville shall own, construct, and service the 115 kv transmission line and its termination facilities on the Gainesville system. Construction, service, and ownership of the physical interconnection facilities at the Archer Substation shall be as agreed upon by the parties.

(6) Florida Power and Gainesville shall proceed to construct in the shortest reasonable time the interconnection facilities referred to in Findings (4) and (5) above.

(7) The terms and conditions of the sale and exchange of electric energy following the effective date of the interconnection, and thereafter, unless and until modified by rate schedule filing completed in accordance with Part 35 of the Commission's Regulations under the Federal Power Act or modified by Commission order, shall be as follows, subject to modification by written agreement of the parties and acceptance by the Commission of such modification:

(a) Installed Reserves: Gainesville shall own or provide generating capacity resources equal to or greater than 115 percent of Gainesville's estimated annual peak-hour demand. The estimated peak-hour demand for any year shall be that given for the calendar year in Schedule 19 of the latest FPC Form 12 Report filed by Gainesville with this Commission, unless otherwise agreed to in writing by the parties.

(b) Economy Energy: If the parties engage in economy energy transactions, payment therefor shall be at the rate per kilowatt hour of one-half the sum of the incremental cost of providing the energy from the seller's resources plus the incremental cost that would have been incurred by providing the energy from the buyer's resources.

(c) Operating Reserves: Gainesville shall maintain spinning and ready reserves in accordance with procedures established by the Florida Operating Committee up to a limit of 15 percent of Gainesville's estimated annual peak-hour demand for ready reserves and up to a limit of 10 percent of that demand for spinning reserves.

(d) Inadvertent Energy Transfer: Inadvertent transfers of energy shall be returned by the receiving party in an amount equal to that received and at comparable times, or shall be paid for as specified in paragraph (7)(g) below.

(e) Emergency Electric Service: Emergency electric service provided for a period of less than 60 minutes shall be treated as Inadvertent Energy Transfer (see paragraph (7)(d) above). Such service, if provided beyond the end of a 60 minute period shall be treated as Scheduled Electric Service (see paragraph (7)(f) below).

(f) Scheduled Electric Service: To the extent of its ability to do so, each party shall provide power and energy to the other for scheduled maintenance of generating or other facilities. Payment shall be in accordance with paragraph (7)(g) below.

(g) Payments: Except for payments related to Economy Energy transactions, described under paragraph (7)(b) above, payments shall be as follows:

(1) Inadvertent energy, if not returned in kind, shall be paid for upon 30 days' notice given by the delivering party at the rate of 4 mills per kwh, or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the point of interconnection.

(2) Scheduled Electric Service shall be paid for at the rate of $.05 per kw per day for each kw of actual or scheduled demand, whichever is greater, if paid for by Gainesville or whichever is smaller if paid for by Florida Power, plus 4 mills per kwh or the seller's average fuel cost plus 10 percent of such cost, whichever is less at the Archer Substation.

(8) Gainesville shall reimburse Florida Power for the annual costs associated with providing frequency regulation for its control area until such time as Gainesville installs tie-line bias control equipment in its own system and assumes responsibility for regulation of its own control area. Florida Power is directed to submit to the Commission a proposed rate schedule covering this type

of service. If the parties cannot agree on how to classify Florida Power's costs associated with the frequency regulation function or in a method of allocating such costs to Gainesville, the Commission shall make the determination of the annual payment due from Gainesville to Florida Power after receiving the views and supporting calculations of each party.

(9) Gainesville and Florida Power shall establish a coordinating or administrative committee to represent the two parties in all matters arising under the interconnection arrangements hereinafter directed. The coordinating committee shall establish an operating subcommittee to be responsible for the day-to-day operations such as operation and maintenance schedules, control and operating procedures, and supervision of accounts.

(10) Within 60 days from the date of this opinion and order Florida Power shall submit to the Commission for consideration a proposed rate schedule reflecting the terms and conditions of the interconnection as set forth in the Findings above.

(11) Florida Power shall report to the Commission the date of commencement of service provided for herein within 30 days following the commencement of such service.

(12) This Commission's direction that Florida Power connect its facilities with those of Gainesville, as set forth in the Findings above, renders moot the allegations in Gainesville's complaint that Florida Power is violating Sections 205 and 206 of the Federal Power Act by interconnecting with other electric utility systems and discriminating against Gainesville by refusing to interconnect with Gainesville.

(13) The evidence of record in this proceeding does not establish violation by Florida Power of Section 10(h) of the Federal Power Act as alleged in Gainesville's complaint.

(14) Apart from the exceptions to the examiner's initial decision which were expressly granted in the foregoing Opinion and Findings, the exceptions to the examiner's decision should be denied.

(15) Florida Power's petition of July 8, 1968, to reopen the proceeding for the purpose of taking additional evidence should be denied.

*The Commission orders:*

(A) Florida Power shall establish connection with its facilities with those of Gainesville as described in Finding (4), *supra,* as soon as Gainesville completes the transmission lines and other facilities necessary to such interconnection, and thereafter Florida Power shall sell, supply, and exchange energy to and with Gainesville under the terms and conditions prescribed in Findings (7), (8), and (9).

(B) Florida Power shall notify this Commission when the interconnection ordered in Paragraph (A) is established and operative.

(C) The examiner's decision to the extent not inconsistent herewith is hereby adopted as part of this Opinion.

(D) Florida Power is ordered to comply with the directives set forth in Findings (8), (9), (10), and (11).

(E) Exceptions not expressly granted are hereby denied.

(F) Florida Power's petition of July 8, 1968, to reopen the proceeding for the purpose of taking additional evidence is denied.

By the Commission.

Commissioner Bagge concurring filed a separate statement appended hereto.

(SEAL)

GORDON M. GRANT,
*Secretary.*

BAGGE, Commissioner, concurring:

I cannot join in this opinion without expressing my concern for the irrational behavior engaged in by the parties to this proceeding. A rational society cannot tolerate the economic waste which has been documented on this record. If regulation is to serve any function at all, it should, at least, preclude meaningless duplication.

CARL E. BAGGE
Carl E. Bagge

**2. Opinion on Rehearing of Federal Power Commission**

OPINION No. 550-A
MEMORANDUM OPINION AND ORDER DENYING APPLICATION FOR REHEARING

(Issued January 2, 1969)

O'CONNOR, Commissioner:

By Opinion No. 550 and Order dated November 5, 1968, the Commission found that it was necessary and appropriate for the purposes of Section 202(b) of the Federal Power Act to order the Florida Power Corporation (Florida Power or Corporation) to establish physical connection of its transmission facilities with the facilities of the Gainesville Utilities Department and the City of Gainesville, Florida (both referred to as Gainesville or City), and to order Florida Power to sell energy to and exchange energy with Gainesville under certain specified terms and conditions.

On December 3, 1968, Florida Power filed an Application for Rehearing of the above opinion and order, stating that the Commission had erred (1) in finding jurisdiction; (2) in evaluating the basis and uses of the proposed connection; (3) in prescribing compensation or financial payments; and (4) in failing to condition the interconnection upon the prior agreement of Gainesville to eliminate and avoid wasteful duplication of facilities.

Upon consideration of the application of Florida Power and the numerous arguments set forth therein, the Commission finds that the grounds advanced for rehearing are not persuasive. These grounds are for the most part restatements, often in the same or similar terms, of arguments submitted by Florida Power earlier in this proceeding before the examiner and before the Commission. The arguments so restated include, among others, all of the arguments on the jurisdictional question; all of the allegations to the effect that Florida Power will gain no financial or engineering benefits from the interconnection; the assertions that Florida Power is entitled to charge Gainesville a demand charge of $3.08 per kw per year times the 50 mw capability of Gainesville's largest unit, and that without provision for such a demand charge the Commission's order will constitute an unconstitutional taking of Florida Power's property; and the arguments relating to the necessity for a conditioned interconnection order under which Gainesville will agree to eliminate and avoid wasteful duplication of facilities. The above contentions were all thoroughly considered and were rejected by the Commission in the preparation of Opinion No. 550 and Order.

In addition to the above, Florida Power advances certain grounds for rehearing which call for specific comment. Thus, throughout its application, the Corporation emphasizes the contention that Gainesville will not be able to render any service of significant value to Florida Power. Upon consideration of this argument we find that Florida Power has greatly underestimated Gainesville's capacity to be of service to the Corporation. Because of its electrical isolation, Gainesville has maintained a very large reserve capacity in relationship to its peak load. In 1965 its peak load was 51.1 mw, and its reserve capacity was 57.3 mw or 112.1 percent of peak demand. Although the purpose of this interconnection proceeding is to enable Gainesville to lessen its need for self-reliance, Gainesville's reserve capacity will continue to be large even after inter-

connection. The staff's witness has testified that during the ten year period 1970-1979, Gainesville's average minimum reserves at the time of Florida Power's annual peak hour demand will be 43 percent. According to staff's computations, Gainesville will be able to deliver, if there will be sufficient interconnection transmission facilities, anywhere from 60 mw to 100 mw to Florida Power during certain periods in January, April, and September 1970. This prediction that Gainesville will be able to furnish capacity of this magnitude to Florida Power plainly refutes Florida Power's assertion that the interconnection will prove to be a one-way street with all the benefits flowing from the Corporation to the City. The Commission is satisfied that the interconnection will permit a reciprocal exchange of benefits to the mutual advantage of both systems.

The above discussion as to Gainesville's future reserve capacity furnishes the ready answer to Florida Power's contention that the Commission erred in finding at pages 7 and 8 of Opinion No. 550 that "the ultimate limiting factor controlling the magnitude of the inadvertent transfer in either direction is the electrical capacity of the facilities to be installed between the Company and City, 60,000 kva." Contrary to Florida Power's assertion, the evidence does establish that Gainesville will have electrical resources to permit a transfer to Corporation of 60,000 kva. Moreover, despite Florida Power's statement that the proposed connection could carry a 100 percent overload, thereby subjecting the Corporation's system to a transfer of 120,000 kva to Gainesville, it is plain that the load carrying capability of the connection will be limited by Gainesville's transmission line which is to be designed for 60,000 kva. According to the record, such line may carry an overload up to 80,000 kva, but only for short periods of time during cold weather.

Staff's studies of Gainesville's future reserve capacity also serve to refute Florida Power's allegations that there

is "no scintilla of evidence" to support the Commission's finding that Gainesville will become an additional interchange power source on Florida Power's network after the interconnection is consummated. Similarly, staff's studies rebut the Corporation's assertions regarding the insignificance of Gainesville's anticipated capacity contributions.

Florida Power takes issue with the Commission's findings that the Corporation agrees that the electrical interconnection should be established, and that the Corporation will be able to make some use of such interconnection. Florida Power argues that it has consistently maintained that the connection is not necessary and is not appropriate in the public interest. Florida Power's assertions on this point are not consistent with its prior pleadings. In its opening brief before the examiner, the Corporation stated that given the terms and conditions which it requested, it "is agreeable to a voluntary connection with Gainesville", that it proposes scheduled electrical service between the two systems, and that it is agreeable to seasonable exchange on a voluntary basis by mutual agreement of the parties. Plainly, the Corporation's assertions of error are not persuasive. We deem it appropriate, however, to modify our findings of the Corporation's position of agreement with qualifying language showing that Florida Power's position is subject to the conditions which it set forth in its pleadings. We also find it appropriate to delete from Opinion No. 550 the final sentence of the second paragraph on page 18, where we indicated that Florida Power was not in disagreement with our position that the "issue of overriding significance here is that it is in the public interest that the electrical isolation of Gainesville be ended as quickly as possible." Florida Power evidently does not agree with this view.

Florida Power disputes our findings at pages 4, 9, and 15 of Opinion No. 550 that Gainesville's capital cost for the interconnection will approximate $3,000,000. Florida Power claims that Gainesville's cost will be only $1,500,000,

and that any costs above this amount will represent expenditures required for Gainesville's internal purposes. The record shows that the consulting engineer retained by Gainesville testified that the investment for transmission facilities required to interconnect Gainesville's generating plant with Florida Power's system would be double the figure of $1,500,000. In light of the above explanation, we find that the expenditure of $3,000,000 will be required in order to enable Gainesville's generating capacity to flow into Florida's system.

Florida Power asserts that the Commission erred in finding that the interconnection will add an additional energy source in an area where Florida Power has no generating plant. The Corporation states that it now has three energy sources to supply its load in the Gainesville area and that it does not need a fourth. Florida Power's Form 12 for 1965 shows that the Corporation's Suwannee Plant is the closest generating source to its Gainesville load center. This plant is more than 75 transmission line miles away from this load center. The next closest plant is the Inglis Station which is more than 80 transmission line miles away. Florida Power's three energy sources are connected to the Gainesville load area by 69 kv transmission lines. According to staff, two of these lines serve other loads and could be vulnerable to outages. We agree with staff's position that the connection with Gainesville's generating resources would upgrade service reliability to the Corporation's customers in the Gainesville area.

Florida Power further contends that we have failed to give proper consideration to the fact that on at least two occasions Florida Power has voluntarily negotiated with other systems financial payments to offset lack of reciprocity or mutuality of an interconnection. Florida Power refers to its agreement with the Florida Power & Light Company whereby the latter company paid all of the fixed charges and administrative costs of a connection until it

became mutually beneficial. It also refers to its agreement with the Gulf Power Company to whom Florida Power is now paying a fee for a connection which is not mutually beneficial. We have considered both of the cited cases and we do not find their precedent applicable here. In the Florida Power & Light Company situation, that company paid for the fixed charges of a circuit for one year when it required the use of the line and when Florida Power did not. In the Gulf Power Company case, Florida Power paid Gulf Power for the use of a line which the latter company constructed for Florida Power's needs and not for its own. Neither of these cases resembles the Gainesville situation in that Gainesville proposes to construct at its own expense transmission facilities which will be mutually beneficial to itself and to Florida Power. Florida Power also refers to a new connection which it voluntarily negotiated with another system after the close of the hearing under an agreement whereby the other system will pay Florida Power for emergency service $3.08 per kw per year times the capacity of the other system's largest unit. No probative significance as to a generally-established industry practice can be attached to this one instance. Moreover, there is no assertion that the new connection and the Gainesville situation are substantially similar from a factual standpoint.

Consideration has been given to Florida Power's statement that we erred in directing the Corporation to submit a proposed rate schedule for providing frequency regulation in Gainesville's control area until Gainesville installs tie-line bias control equipment. Florida Power contends that the Gainesville system and load will be so small that any charge Florida Power might make for adding Gainesville to Florida Power's control area for frequency regulation will be too insignificant to justify the cost of preparing and administering a rate schedule. In light of this contention, the Commission finds that the submission of the proposed rate schedule shall be made optional at Florida Power's discretion.

*The Commission finds:*

The assignments of error and grounds for rehearing set forth in the Application for Rehearing filed in this proceeding by the Florida Power Corporation present no facts or legal principles which would warrant any change in or modification of the Commission's Opinion No. 550 and Order except as specified below.

*The Commission orders:*

(A) The first sentence in the final paragraph on page 6 of Opinion No. 550 is modified by the following new footnote 1a:

> 1a The findings made in this opinion which attribute to Florida Power a willingness to interconnect or an agreement as to the suitability of the interconnection are subject to the reservation that Florida Power's expressions of agreement are qualified by the conditions set forth in its pleadings.

(B) The final sentence of the second paragraph on page 18 of Opinion No. 550 is deleted.

(C) A new sentence is added to finding paragraph (8) of Opinion No. 550, as follows:

> In the event that Florida Power elects not to assess Gainesville with any portion of the annual costs associated with providing frequency regulation for its control area, it shall report such determination to the Commission, and the Commission may then waive the above requirements of this paragraph.

(D) Except as provided in ordering paragraphs (A), (B), and (C) above the Application for Rehearing filed in this proceeding is in all respects denied.

By the Commission.

(SEAL)

KENNETH F. PLUMB,
*Acting Secretary.*

## APPENDIX C

Section 202 of the Federal Power Act, 49 Stat. 487, as amended, 16 U.S.C. 824a provides in pertinent part:

> Sec. 202 (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present it's views and recommendations, and shall receive and consider such views and recommendations.
>
> (b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such

public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided,* That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.